IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.637 OF 2006

Govind Gangaram Khedekar & Ors. ...Appellants

Versus

Smt Savitri Ramji Pandare ...Respondent

Shri S.M.Railkar for the Appellants.

Shri Parag Shelke with Shri C.K.Marathe for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : OCTOBER 01st, 2007.

P.C.:

1. Heard learned counsel appearing for the appellants. The second appeal is preferred by the original defendants. The original respondent in the second appeal is the Plaintiff.

2. The respondent-plaintiff filed a suit for partition and separate possession against the appellants who are the original defendants.

3. According to the case of the respondent, the suit properties were held by the predecessor of the parties by the name of Ganya Mehtar alias Khedekar. The said Ganya had a son by the name Bala. Bala had three sons by the name Rama, Babu and Baba and two daughters. The said Baba and two daughters died during the life

time of their father. It is contended by the Respondent that from the year 1948 the surviving sons of Bala i.e Rama and Babu started residing separately and by way of family arrangement they were enjoying different parts of joint family property. It is however contended that there was no actual partition by metes and bounds between the parties. It is alleged that Babu i.e the father of Respondent died in the year 1957 and the Respondent being his only daughter was the only legal representative of Babu. The Appellant Nos.1 to 10 are the legal representatives of the said Rama. It is alleged that the Appellant Nos.11 and 12 are not concerned with the suit property in any manner. It is alleged that the Respondent-Plaintiff being the legal representative of Babu was entitled to one half share of Babu and legal representatives of Rama were entitled to one half share of Rama.

4. The suit was contested by the Appellants by filing written statement. The Appellant No.8 filed the main written statement. The Appellant No.8 contended in the written statement that Babu died in the year 1948 and therefore, the Respondent is not entitled to claim any right as a heir. It is alleged that Rama and Babu were residing separately right from the beginning and they have acquired various properties during their life

time. It is alleged that the suit properties were the properties of the deceased Rama and the Appellant Nos.1 to 10 being his heirs are entitled to exclusive ownership of the said properties. The said written statement was adopted by the Appellant Nos.1 to 6.

5. The learned trial Judge dismissed the suit by holding that the Respondent had not established that the suit properties were joint family properties. In an appeal preferred by the Respondent, the District Court has passed a decree. The decree passed by the District Court was set aside by this Court by order dated 21st April, 2005 by holding that the Appellate Court seems to have proceeded on the assumption that Babu had one half share in the suit properties. This court observed that there was no clear finding recorded by the Appellate Court as regards the controversy whether suit properties were joint family properties of the Appellant Nos.1 to 10 and the Respondent. Therefore, this Court passed an order of remand. After the order of remand, by the impugned judgment and decree the learned additional District Judge has allowed the Appeal and has passed a preliminary decree of partition in favour of the Respondent. The Appellate Court observed that the shares in the suit properties sold by the Appellant Nos.1 to 10 to Appellant Nos.11 and 12 shall be

allotted, as far as possible, to the share of the Appellate Nos.1 to 10.

6. The learned counsel appearing for the Appellants contended that there is a clear finding recorded by the Appellate Court that no evidence was produced by the Respondent to show that the suit properties were acquired by Ganya Mehtar. He submitted that there was absolutely no evidence on record to show that the suit properties were held by Ganya Mehtar. He submitted that except for an entry in revenue record in the name of Rama in the capacity as Karta of the joint Hindu Family, there is no material on record to show that the suit properties are ancestral properties of the family of the Appellant Nos.1 to 10 and the Respondent. He submitted that earlier partition of the property between Rama and Babu was admitted by the Respondent. He, therefore, submitted that in absence of any material on record to show that the suit properties were ancestral properties, the Appellate Court could not have upheld the case made out by the Respondent.

7. I have considered the submissions. Perusal of the written statement filed by the Appellant No.8 which is adopted by the Appellant Nos.1 to 6 shows that the suit properties were acquired by the deceased Rama and

after his demise, by inheritance, the properties were acquired by deceased Gangaram and Ganpat from whom the Appellant Nos.1 to 10 have obtained the properties by inheritance. In so far as genealogy pleaded by the Respondent is concerned, the only stand taken in written statement was that the genealogy was incomplete and necessary information has not been incorporated. However, there is no dispute raised regarding relationship between the parties as reflected from the genealogy. The genealogy shows that one Bala was the son of Ganya and Rama and Babu were the only two surviving sons of Bala. Gangaram and Ganpat are the sons of deceased Rama and the Respondent is the daughter of deceased Babu.

8. The Appellate Court has referred to Mutation Entries 203 and 326 which show that the name of Rama was entered in the revenue records in respect of suit property as elder son and Karta of joint Hindu Family. The Appellate Court has observed that there is no explanation from any of the Appellants as to how the name of Rama was incorporated in the revenue records in his capacity as Karta of joint Hindu Family. The Appellate Court has also referred to Mutation Entry 326 which shows that Ganya died in the year 1941 and the name of his elder son Rama was entered as Karta of joint

Hindu Family. The Appellate Court has observed that aforesaid Mutation entries falsify the case made out by the Appellants that Rama was the only person having title to the suit properties in his personal capacity. Apart from the revenue record, the Appellate Court has considered the fact that the Appellants have not led any evidence to establish exclusive title of Rama.

8. Considering the relationship between the parties, the Appellate Court has accepted the case made out by the Respondent that the suit properties were held by Rama in his capacity as Karta of the joint Hindu Family. It is very difficult to find fault with the aforesaid finding of fact recorded by the Appellate Court on the basis of the material on record.

9. No substantial question of law arises. There is no merit in the Second Appeal and the same is accordingly dismissed with no orders as to costs.

JUDGE